

### § 652.3

### 7 CFR Ch. VI (1–12 Edition)

where the eligible participant will not receive financial assistance for the implementation of the practice paid for in the technical service contract through participation in a Title XII conservation program or the Agricultural Management Assistance Program, 7 U.S.C. 1524.

*Technical service provider* means an individual, entity, Indian Tribe, or public agency either:

(1) Certified by NRCS and placed on the approved list to provide technical services to participants; or

(2) Selected by the Department to assist the Department in the implementation of conservation programs covered by this part through a procurement contract, contribution agreement, or cooperative agreement with the Department.

*Written agreement* means the document that specifies the rights and obligations of any individual or entity that has been authorized by NRCS to receive conservation planning assistance without having a program contract.

[75 FR 6845, Feb. 12, 2010, as amended at 75 FR 48273, Aug. 10, 2010]

#### § 652.3 Administration.

(a) As provided in this part, the Department will provide technical assistance to participants directly, or at the option of the participant, through a TSP in accordance with the requirements of this part.

(b) The Chief of NRCS will direct and supervise the administration of the regulations in this part.

(c) NRCS will:

(1) Provide overall leadership and management for the development and administration of a TSP process;

(2) Consult with the Farm Service Agency and other appropriate agencies and entities concerning the availability and utilization of TSPs and the implementation of technical service;

(3) Establish policies, procedures, guidance, and criteria for certification, recertification, decertification, certification renewal, and implementation of the use of TSPs;

(4) Provide training to ensure that persons meet the certification criteria for certain technical expertise when there is a lack of training resources or market outside the agency for such

technical expertise. However, any training provided by the Department will be limited to training about Department regulations, policies, procedures, processes, and business and technical tools unique to NRCS; and

(5) Establish a process for verifying information provided to NRCS under this part.

(d) The Department will not make payments under a program contract or written agreement with a participant for technical services provided by a TSP unless the TSP is certified by NRCS for the services provided and is identified on the approved list.

(e) The Department may enter into procurement contracts, contribution agreements, cooperative agreements, or other appropriate instruments to assist the Department in providing technical assistance when implementing conservation programs covered by this part. The Department will ensure that such instruments contain the qualification and performance criteria necessary to ensure quality implementation of the goals and objectives of these conservation programs; therefore, when the Department obtains assistance from a TSP in this manner, the TSP is authorized to provide technical services and receive payment even if such TSP is not certified in accordance with subpart B, nor identified on the approved list.

(f) When a participant acquires technical services from a TSP, the Department is not a party to the agreement between the participant and the TSP. To ensure that quality implementation of the goals and objectives of the conservation programs are met, the TSP must be certified by NRCS in accordance with subpart B of this part and identified on the approved list. Upon request of NRCS, TSPs are required to submit copies of all transcripts, licensing, and certification documentation.

#### § 652.4 Technical service standards.

(a) All technical services provided by TSPs must meet USDA standards and specifications as set forth in Departmental manuals, handbooks, guides, and other references for soils mapping and natural resources information, conservation planning, conservation

practice application, and other areas of technical assistance.

(b) The Department will only pay a participant for technical services provided in accordance with established NRCS standards, specifications, and requirements. The Department must approve all new technologies and innovative practices, including interim standards and specifications, prior to a TSP initiating technical services for those technologies and practices.

(c) A TSP must assume responsibility in writing for the particular technical services provided. Technical services provided by the TSP must:

(1) Comply with all applicable Federal, State, tribal, and local laws and requirements;

(2) Meet applicable Department standards, specifications, and program requirements;

(3) Be consistent with the particular conservation program goals and objectives for which the program contract was entered into by the Department and the participant; and

(4) Incorporate alternatives that are both cost effective and appropriate to address the resource issues. Conservation alternatives will meet the objectives for the program and participant to whom assistance is provided.

(d) TSPs are responsible for the technical services provided, including any costs, damages, claims, liabilities, and judgments arising from past, present, and future negligent or wrongful acts or omissions of the TSP in connection with the technical service provided.

(e) The Department will not be in breach of any program contract or written agreement if it fails to implement conservation plans or practices or make payment for conservation plans or practices resulting from technical services that do not meet USDA standards and specifications or are not consistent with program requirements.

(f) The participant is responsible for complying with the terms and conditions of the program contract or written agreement, which includes meeting USDA technical standards and specifications for any technical services provided by a TSP.

(g) The TSP will report in the NRCS conservation accomplishment tracking system the appropriate data elements

associated with the technical services provided to the Department or participant.

(h) To the extent allowed under State or tribal law, TSPs may utilize the services of subcontractors to provide specific technical services or expertise needed by the TSP, provided that the subcontractors are certified by NRCS in accordance with this part for the particular technical services to be provided and the technical services are provided in terms of their Certification Agreement. Payments will not be made for any technical services provided by uncertified subcontractors, except when such technical services are provided under the provisions of a procurement contract, cooperative agreement, or contribution agreement with the NRCS.

**§ 652.5 Participant acquisition of technical services.**

(a) Participants may obtain technical assistance directly from the Department or, when available, from a TSP.

(b) To acquire technical assistance directly from the Department, participants should contact their local USDA Service Center.

(c) To acquire technical services from a TSP, participants must:

(1) Enter into and comply with a program contract or a written agreement prior to acquiring technical services; and

(2) Select a certified TSP from the approved list of TSPs.

(d) The Department may approve written agreements for technical assistance prior to program participation based on available funding and natural resource priorities as identified by the State Conservationist.

(e) The technical assistance indicated in paragraph (d) may include the development of conservation plans or activity plans suitable for subsequent incorporation into a program contract.

(f) The Department may make payment to eligible participants who have a technical service contract and utilize it for technical assistance from a TSP.

(g) The Department will identify in the particular program contract or written agreement the payment provisions for TSPs hired directly by the participant.